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5 Attorney for Plaintiff, Marilyn Churchill

6 UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9
10 SAN FRANCISCO DIVISION

11 MARILYN CHURCHILL, an individual,

12 Plaintiff,

13 vs.

14 JOHN BARGETTO, in his individual and
official capacities; BARGETTO'S SANTA
15 CRUZ WINERY, a California Corporation; and
DOES 1 through 100, inclusive,

16 Defendants.
17

Civil Action No.: C07-003007 MMC

**NOTICE AND STIPULATED MOTION TO
AMEND SCHEDULE**

Hearing Date: April 11, 2008

Time: 9:00 a.m.

Courtroom: 7, 19th Floor

Judge: Hon. Maxine M. Chesney

Trial Date: September 8, 2008

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19 **NOTICE & STIPULATED MOTION**

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Please take notice that on Friday, April 11, 2008 at 9:00 a.m. in Courtroom 7, 19th
22 Floor, the parties in this action, by and through their attorneys of record, will and hereby
23 jointly move the Court to amend the Scheduling Order in this matter pursuant to Federal
24 Rule of Civil Procedure 16(b)(4) (West 2008). Good cause exists for the Court to grant
25 this motion in its discretion.

26 Specifically, Plaintiff's counsel was involuntarily unavailable for a period of weeks
27 due to the sudden passing of his father in late January 2008, effectively resulting in the loss
28 of February for the resolution of substantial, pending discovery issues. In addition,

NOTICE AND STIPULATED MOTION TO AMEND SCHEDULE

1 Defense counsel recently established and joined a new law firm which adversely impacted
2 his professional schedule in the past weeks. Granting of this motion will also be in the
3 furtherance of justice, and will prevent manifest injustice, as it will permit the parties to
4 resolve their extensive discovery disputes and properly complete their pending discovery
5 so that this matter may be fully tried on its merits.

6 Accordingly, the parties respectfully request that the trial date and all other
7 scheduled dates in this matter be postponed by two (2) months. Given the parties' shared
8 interest in having this matter properly tried on its merits, the parties are amenable to a re-
9 setting of the trial date even as late as 2009 if the Court's calendar so dictates.

10 This motion is based on the facts, legal authority and argument presented herein, the
11 Declaration of David P. Morales in Support of Stipulated Motion to Amend Schedule
12 ("Morales Decl."), the legal record in this matter, and such other evidence and law as may
13 be presented to the Court.

14 APPLICABLE LAW

15 Federal Rule of Civil Procedure 16(b)(4) provides, in pertinent part, that "a schedule may
16 be modified only for good cause and with the judge's consent." *See* Fed. R. Civ. Proc. 16(b)(4)
17 (West 2008).

18 RELEVANT FACTS & ARGUMENT

19 In January 2008, the parties were working diligently to resolve discovery disputes
20 between them involving hundreds of pages of discovery objections and other discovery
21 issues, so they could proceed with their deposition discovery in preparation for scheduled
22 mediation in March 2008. *See* Morales Decl., ¶2. Unfortunately, Plaintiff's counsel
23 received word that his father suddenly passed away in late January 2008. *See id.* As a
24 result, Plaintiff's counsel had to promptly leave town to assist his family in Southern
25 California. *See id.*

26 Due to the suddenness of this unfortunate event and the needs of his mother,
27 Plaintiff's counsel was involuntarily unavailable for a period of approximately three weeks
28 in February 2008. *See* Morales Decl., ¶3. As a result, Plaintiff counsel's schedule was

1 adversely impacted in this matter, and, also in other professional matters pending
2 concurrently. *See id.* As a result, work which had been scheduled for that time period has
3 been postponed to, and superimposed upon additional legal work Plaintiff's counsel had
4 previously scheduled for March. *See id.* Plaintiff's counsel is diligently working to
5 resolve the remaining discovery disputes and to complete discovery. *See id.* However,
6 Plaintiff's counsel effectively lost the month of February, and is working to catch up in this
7 and his other pending litigation during the month of March. *See id.* As a result, the parties
8 feel that the existing schedule will not permit them to fully resolve their discovery disputes
9 and timely complete their discovery. *See id.*

10 Upon counsel's return to the office in late February, the parties cooperated with one
11 another to ensure the completion of pending discovery, and, on February 29, 2008, filed a
12 joint Stipulation to Continue Discovery Deadlines for that purpose. *See Morales Decl.*, ¶4.
13 On March 4, 2008, the Court denied the parties' stipulation to extend the discovery
14 deadlines due to its apparent impact on the remaining schedule. Unfortunately, given the
15 extensive discovery previously initiated and the substantial discovery disputes still pending
16 resolution, it does not appear that such discovery can be properly completed on the present
17 schedule. *See id.* Granting of this motion will be in the furtherance of justice as it will
18 permit the parties to resolve their extensive discovery disputes and properly complete their
19 pending discovery so that this matter may be fully tried on its merits. *See id.* The
20 requested relief will also avoid manifest injustice in that it will permit this action to be
21 fully tried on its merits.

22 Defense counsel supports this motion not only due to his understanding of these
23 unfortunate circumstances, but also because Defense counsel recently established and
24 joined a new law firm which adversely impacted his professional schedule in the past
25 weeks.

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REQUESTED RELIEF

Accordingly, the parties respectfully request that the trial date and all other scheduled dates in this matter be postponed by two (2) months. Given the parties' shared interest in having this matter properly tried on its merits, the parties are amenable to a re-setting of the trial date even as late as 2009 if the Court's calendar so dictates. The parties request this relief in order to permit pending discovery to be completed and to allow this matter to be fully tried on its merits.

Dated: March 7, 2008

THE MORALES LAW FIRM

By: /s/ David P. Morales

DAVID MORALES
Attorneys for Plaintiff

Dated: March 10, 2008

TINGLEY PIONTKOWSKI LLP

/s/ Bruce C. Piontkowski

BRUCE C. PIONTKOWSKI
Attorneys for Defendants

1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
2 "conformed" signature (/s/) within this efiled document.

3
4 Dated: March 8, 2008

TINGLEY PIONTKOWSKI LLP

5 By: /s/ Bruce C. Piontkowski
6 BRUCE C. PIONTKOWSKI
7 Attorneys for Defendants
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